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11 IN THE UNITED STATES DISTRICT COURT

12 FOR THE TERRITORY OF GUAM

13 UNITED STATES OF AMERICA,

14 CRIMINAL CASE NO. 20-00021

15 Plaintiff,

16 vs.

17 RICKY JAMES JR. SALAS SANTOS,

18 Defendant.

19 **UNITED STATES' NOTICE OF INTENT
TO MOVE FOR ADMISSION OF § 404(b)
ACTS**

20 Comes now the United States, through Rosetta L. San Nicolas, Assistant U.S. Attorney
21 and provides notice that the Government intends to move this Honorable Court to admit evidence
22 of crimes, wrongs or other acts pursuant to Rule 404(b) of the Federal Rules of Evidence.

23 Federal Rules of Evidence § 404(b) states that “evidence of a crime, wrong, or other act
24 is not admissible to prove a person’s character in order to show that on a particular occasion the
person acted in accordance with the character.” Fed.R.Evid. § 404(b)(1). The rule states that
“[T]his evidence may be admissible for another purpose, such as proving motive, opportunity,
intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. On
request by a defendant in a criminal case, the prosecutor must: (A) provide reasonable notice of

1 the general nature of any such evidence that the prosecutor intends to offer at trial; and (B) do so
2 before trial – or during trial if the court, for good cause, excuses lack of pretrial notice.”
3 Fed.R.Evid. § 404(b)(2).

4 Here, the Government intends to use evidence of the Defendant Ricky James Jr. Salas
5 Santos’ motive, opportunity, intent, plan, knowledge, identity, absence of mistake, or lack of
6 accident – with respect to the counts of Attempted Possession with Intent to Distribute
7 Methamphetamine Hydrochloride and Possession with Intent to Distribute Methamphetamine
8 Hydrochloride.

9 The Ninth Circuit has adopted an “inclusionary” approach to Fed.R.Evid. § 404(b).
10 *United States v. Hadley*, 918 F.2d 848, 850 (9th Cir. 1990). The admission of any evidence of
11 crimes, wrongs, or acts relevant to an issue in the trial is permitted unless it proves only the
12 Defendant’s criminal propensity. *Id.*, *United States v. Winters*, 729 F.2d 602, 604 (9th Cir.
13 1984). The trial judge is accorded wide discretion in deciding whether to admit such evidence.
14 *Hadley*, 918 F.2d at 850. The evidence may concern uncharged acts. *Id.* To be probative of
15 something other than criminal propensity, the other crimes, wrongs, or acts evidence must satisfy
16 the criteria set forth in *United States v. Lozano*, 623 F.3d 1055, 1059 (9th Cir. 2010). “Rule
17 404(b) provides that the district court may admit evidence of prior bad acts if it (1) tends to prove
18 a material point; (2) is not too remote in time; (3) is based upon sufficient evidence; and (4) in
19 some cases, is similar to the offense charged.” *Lozano*, 623 F.3d 1059, 1059. If these four
20 elements are satisfied, a court must balance the probative value of the evidence against its
21 prejudicial effect to determine whether it is admissible under Rule 403. *United States v. Curtin*,
22 489 F.3d 935, 957 (9th Cir. 2007).

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The Government provides notice that it intends to move, pursuant to Fed.R.Evid. § 404(b) to introduce evidence within these enumerated exceptions.

Respectfully submitted this 11th day of March, 2021.

SHAWN N. ANDERSON
United States Attorney
Districts of Guam and the NMI

By: /s/ Rosetta L. San Nicolas
ROSETTA L. SAN NICOLAS
Assistant U.S. Attorney